

1 WO
2
3
4
5

6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**

8 Teresa Lynnette Rodriguez,
9

10 Plaintiff,

11 v.

12 Acting Commissioner of the Social Security
13 Administration,

14 Defendant.
15
16

No. CV-18-08146-PCT-ESW

ORDER

17
18 Pending before the Court is Teresa Lynnette Rodriguez' ("Plaintiff") appeal of the
19 Social Security Administration's ("Social Security") denial of her application for
20 disability insurance benefits. The Court has jurisdiction to decide Plaintiff's appeal
21 pursuant to 42 U.S.C. § 405(g). Under 42 U.S.C. § 405(g), the Court has the power to
22 enter, based upon the pleadings and transcript of the record, a judgment affirming,
23 modifying, or reversing the decision of the Commissioner of Social Security, with or
24 without remanding the case for a rehearing. Both parties have consented to the exercise
25 of U.S. Magistrate Judge jurisdiction. (Doc. 12).

26 After reviewing the Administrative Record ("A.R.") and the parties' briefing
27 (Docs. 15, 17, 20), the Court finds that the Administrative Law Judge's ("ALJ") decision
28 contains harmful legal error. For the reasons explained in Section II below, the decision

1 is reversed and the case is remanded to the Commissioner of Social Security for further
2 proceedings.

3 I. LEGAL STANDARDS

4 A. Disability Analysis: Five-Step Evaluation

5 The Social Security Act (the “Act”) provides for disability insurance benefits to
6 those who have contributed to the Social Security program and who suffer from a
7 physical or mental disability. 42 U.S.C. § 423(a)(1). To be eligible for benefits based
8 on an alleged disability, the claimant must show that he or she suffers from a medically
9 determinable physical or mental impairment that prohibits him or her from engaging in
10 any substantial gainful activity. 42 U.S.C. § 423(d)(1)(A). The claimant must also show
11 that the impairment is expected to cause death or last for a continuous period of at least
12 12 months. *Id.*

13 To decide if a claimant is entitled to Social Security benefits, an ALJ conducts an
14 analysis consisting of five questions, which are considered in sequential steps. 20 C.F.R.
15 § 404.1520(a). The claimant has the burden of proof regarding the first four steps:¹

16 **Step One:** Is the claimant engaged in “substantial gainful
17 activity”? If so, the analysis ends and disability benefits are
18 denied. Otherwise, the ALJ proceeds to step two.

19 **Step Two:** Does the claimant have a medically severe
20 impairment or combination of impairments? A severe
21 impairment is one which significantly limits the claimant’s
22 physical or mental ability to do basic work activities. 20
23 C.F.R. § 404.1520(c). If the claimant does not have a severe
24 impairment or combination of impairments, disability benefits
25 are denied at this step. Otherwise, the ALJ proceeds to step
26 three.

25 **Step Three:** Is the impairment equivalent to one of a number
26 of listed impairments that the Commissioner acknowledges
27 are so severe as to preclude substantial gainful activity? 20

28 ¹ *Parra v. Astrue*, 481 F.3d 742,746 (9th Cir. 2007).

1 C.F.R. § 404.1520(d). If the impairment meets or equals one
2 of the listed impairments, the claimant is conclusively
3 presumed to be disabled. If the impairment is not one that is
4 presumed to be disabling, the ALJ proceeds to the fourth step
5 of the analysis.

6 **Step Four:** Does the impairment prevent the claimant from
7 performing work which the claimant performed in the past?
8 If not, the claimant is “not disabled” and disability benefits
9 are denied without continuing the analysis. 20 C.F.R. §
10 404.1520(f). Otherwise, the ALJ proceeds to the last step.

11 If the analysis proceeds to the final question, the burden of proof shifts to the
12 Commissioner:²

13 **Step Five:** Can the claimant perform other work in the
14 national economy in light of his or her age, education, and
15 work experience? The claimant is entitled to disability
16 benefits only if he or she is unable to perform other work. 20
17 C.F.R. § 404.1520(g). Social Security is responsible for
18 providing evidence that demonstrates that other work exists in
19 significant numbers in the national economy that the claimant
20 can do, given the claimant’s residual functional capacity, age,
21 education, and work experience. *Id.*

22 **B. Standard of Review Applicable to ALJ’s Determination**

23 The Court must affirm an ALJ’s decision if it is supported by substantial evidence
24 and is based on correct legal standards. *Molina v. Astrue*, 674 F.3d 1104, 1110 (9th Cir.
25 2012); *Marcia v. Sullivan*, 900 F.2d 172, 174 (9th Cir. 1990). “Substantial evidence” is
26 less than a preponderance, but more than a “mere scintilla.” *Richardson v. Perales*, 402
27 U.S. 389, 401 (1971) (quoting *Consolidated Edison v. NLRB*, 305 U.S. 197, 229 (1938)).
28 It is “such relevant evidence as a reasonable mind might accept as adequate to support a
conclusion.” *Id.*

In determining whether substantial evidence supports the ALJ’s decision, the
Court considers the record as a whole, weighing both the evidence that supports and

² *Parra*, 481 F.3d at 746.

1 detracts from the ALJ's conclusions. *Reddick v. Chater*, 157 F.3d 715, 720 (9th Cir.
2 1998); *Tylitzki v. Shalala*, 999 F.2d 1411, 1413 (9th Cir. 1993). If there is sufficient
3 evidence to support the ALJ's determination, the Court cannot substitute its own
4 determination. *See Morgan v. Comm'r of the Social Sec. Admin.*, 169 F.3d 595, 599 (9th
5 Cir. 1999) ("Where the evidence is susceptible to more than one rational interpretation, it
6 is the ALJ's conclusion that must be upheld."); *Magallanes v. Bowen*, 881 F.2d 747, 750
7 (9th Cir. 1989). The ALJ, not the Court, is responsible for resolving conflicts and
8 ambiguities in the evidence and determining credibility. *Magallanes*, 881 F.2d at 750;
9 *see also Andrews v. Shalala*, 53 F.3d 1035, 1039 (9th Cir. 1995).

10 Finally, the Court considers the harmless error doctrine when reviewing an ALJ's
11 decision. An ALJ's decision need not be remanded or reversed if it is clear from the
12 record that the error is "inconsequential to the ultimate nondisability determination."
13 *Tommasetti v. Astrue*, 533 F.3d 1035, 1038 (9th Cir. 2008) (citations omitted); *Molina*,
14 674 F.3d at 1115 (an error is harmless so long as there remains substantial evidence
15 supporting the ALJ's decision and the error "does not negate the validity of the ALJ's
16 ultimate conclusion") (citations omitted).

17 **II. PLAINTIFF'S APPEAL**

18 **A. Procedural Background**

19 Plaintiff, who was born in 1971, has experience working as a chiropractor
20 assistant. (A.R. 44, 71). This action concerns Plaintiff's September 10, 2014 application
21 for disability insurance benefits. (A.R. 241-47). Plaintiff's application alleged that on
22 December 1, 2013, she became unable to work due to psoriatic arthritis, depression,
23 anxiety, migraines, back pain, leg pain, joint pain, skin pain, and diabetes. (A.R. 90).
24 Social Security denied the application. (A.R. 133-36). In July 2015, upon Plaintiff's
25 request for reconsideration, Social Security affirmed the denial of benefits. (A.R. 142-
26 44). Plaintiff sought further review by an ALJ, who conducted a hearing on April 11,
27 2017. (A.R. 39-77).
28

1 In a July 3, 2017 decision, the ALJ found that Plaintiff is not disabled within the
2 meaning of the Social Security Act. (A.R. 15-28). The Appeals Council denied
3 Plaintiff's request for review, making the ALJ's decision the final decision of the Social
4 Security Commissioner. (A.R. 1-6). On July 2, 2018, Plaintiff filed a Complaint (Doc.
5 1) requesting judicial review and reversal of the ALJ's decision.

6 **B. The ALJ's Application of the Five-Step Disability Analysis**

7 **1. Step One: Engagement in "Substantial Gainful Activity"**

8 The ALJ determined that Plaintiff has not engaged in substantial gainful activity
9 since December 1, 2013, the alleged disability onset date. (A.R. 17). Neither party
10 disputes this determination.

11 **2. Step Two: Presence of Medically Severe Impairment/Combination**
12 **of Impairments**

13 The ALJ found that Plaintiff has the following severe impairments: (i) psoriatic
14 arthritis; (ii) mild bilateral carpal tunnel syndrome; (iii) cervical degenerative disc disease
15 and spondylosis. (A.R. 17). This determination is undisputed.

16 **3. Step Three: Presence of Listed Impairment(s)**

17 The ALJ determined that Plaintiff does not have an impairment or combination of
18 impairments that meets or medically equals an impairment listed in 20 C.F.R. Part 404,
19 Subpart P, Appendix 1 of the Social Security regulations. (A.R. 20). Neither party
20 challenges the ALJ's determination at this step.

21 **4. Step Four: Capacity to Perform Past Relevant Work**

22 The ALJ found that Plaintiff retained the residual functional capacity ("RFC") to
23 perform light work as defined in 20 C.F.R. § 416.967(b), except that Plaintiff must avoid
24 certain environmental conditions, can never crawl, and can never climb ladders, ropes, or
25 scaffolds. (A.R. 21). Based on the assessed RFC and testimony of the Vocational Expert
26 ("VE") at the administrative hearing, the ALJ concluded that Plaintiff is capable of
27 performing her past relevant work as a chiropractor assistant. (A.R. 26). Plaintiff
28

1 disputes this determination, asserting that the ALJ improperly weighed the opinions of
2 her treating physician and improperly discounted her testimony regarding her symptoms.

3 **5. Step Five: Capacity to Perform Other Work**

4 At the administrative hearing, the VE testified that based on Plaintiff's RFC,
5 Plaintiff would be able to perform the requirements of representative occupations such as
6 marker, routing clerk, and router. (A.R. 72-73). The ALJ found that the VE's testimony
7 was consistent with the information in the Dictionary of Occupational Titles and that the
8 jobs identified by the VE existed in significant numbers in the national economy. (A.R.
9 27). After considering the VE's testimony, Plaintiff's age, education, work experience,
10 and RFC, the ALJ made the alternative finding at Step Five that Plaintiff can make a
11 successful adjustment to other work and is therefore not disabled. (*Id.*). Plaintiff
12 disputes this finding.

13 **C. The ALJ Failed to Provide Valid Reasons for Discounting the Opinions of** 14 **Treating Physician Jonathan Bellew, D.O.**

15 In weighing medical source opinions in Social Security cases, there are three
16 categories of physicians: (i) treating physicians, who actually treat the claimant; (2)
17 examining physicians, who examine but do not treat the claimant; and (3) non-examining
18 physicians, who neither treat nor examine the claimant. *Lester v. Chater*, 81 F.3d 821,
19 830 (9th Cir. 1995). An ALJ must provide clear and convincing reasons that are
20 supported by substantial evidence for rejecting the uncontradicted opinion of a treating or
21 examining doctor. *Id.* at 830-31; *Bayliss v. Barnhart*, 427 F.3d 1211, 1216 (9th Cir.
22 2005). An ALJ cannot reject a treating or examining physician's opinion in favor of
23 another physician's opinion without first providing specific and legitimate reasons that
24 are supported by substantial evidence. *Bayliss*, 427 F.3d at 1216; 20 C.F.R. §
25 404.1527(c)(4) (an ALJ must consider whether an opinion is consistent with the record as
26 a whole); *see also Batson*, 359 F.3d at 1195; *Thomas v. Barnhart*, 278 F.3d 947, 957 (9th
27 Cir. 2002); *Tommasetti*, 533 F.3d at 1041 (finding it not improper for an ALJ to reject a
28 treating physician's opinion that is inconsistent with the record).

1 On May 2, 2016, Plaintiff's treating physician, Jonathan Bellew, D.O. completed a
2 "Medical Assessment of Claimant's Ability to Perform Work Related Activities- Skin
3 Disorders Listing 8.00" (the "Medical Assessment"). (A.R. 1084-85). The Medical
4 Assessment states that Plaintiff has been diagnosed with psoriasis, eczema, lichen
5 simplex chronicus, and prurigo nodularis. (A.R. 1084). Dr. Bellew stated that Plaintiff's
6 "skin lesions have very seriously limited [her] mobility and ability to function since []
7 2015." (A.R. 1085). Dr. Bellew opined that in an eight-hour workday, Plaintiff can only
8 sit for one hour and stand/walk for six hours. (A.R. 1084). Dr. Bellew also opined that
9 Plaintiff's suffers from pain that would cause her to be off task ten percent of a work day.
10 (A.R. 1085). Dr. Bellew's opinions may not be discounted without specific and
11 legitimate reasons supported by substantial evidence in the record.³

12 The ALJ gave Dr. Bellew's Medical Assessment little weight. (A.R. 25). The
13 ALJ first stated that "Although Dr. Bellew treated the claimant since 2012, there was a
14 break in treatment between January 2013 and August 2015 (Exhibit 23F, pp. 1-10)."
15 (*Id.*). As noted above, Dr. Bellew opined that Plaintiff's skin conditions caused severe
16 limitations beginning in 2015. The Court does not find that Plaintiff's break in treatment
17 with Dr. Bellew from 2013 through 2015 is a valid reason for discounting the opinions
18 expressed in the Medical Assessment.

19 As a second reason for discounting Dr. Bellew's opinions, the ALJ stated that
20 "Moreover, his opinion was inconsistent with treatment records that showed
21 improvement with treatment (Exhibit 23F, p. 10)." (*Id.*). However, Exhibit 23F, p. 10
22 refers to a progress note that is dated December 11, 2012. (A.R. 1079). This predates
23 Plaintiff's alleged onset disability date of December 1, 2013. (A.R. 17). Further, the
24 December 11, 2012 progress note states that while Plaintiff reported "great improvement
25 on the knees and elbows," Plaintiff "has no improvement with the posterior thighs."
26

27
28 ³ The specific and legitimate standard, not the clear and convincing standard,
applies because Dr. Bellew's opinions are contradicted by other acceptable medical
sources.

1 (A.R. 1079). Moreover, to reiterate, Dr. Bellew's Medical Assessment opined that
2 Plaintiff's skin conditions caused severe limitations beginning in 2015. (A.R. 1085).

3 Next, the ALJ stated that Dr. Bellew's "opinion was inconsistent with other
4 treating examinations that revealed findings such as good range of motion." (A.R. 25).
5 This is not a specific and legitimate reason for discounting Dr. Bellew's opinion that
6 Plaintiff's impairments cause pain that would result in her being off task ten percent of
7 the work day.

8 Based on the foregoing, the Court finds that the ALJ improperly discounted Dr.
9 Bellew's opinions. This error is harmful and alone requires remand.

10 **D. The ALJ Failed to Provide Specific, Clear, and Convincing Reasons for**
11 **Rejecting Plaintiff's Testimony Regarding her Symptoms**

12 When evaluating the credibility of a plaintiff's testimony regarding subjective pain
13 or symptoms, the ALJ must engage in a two-step analysis. *Vasquez v. Astrue*, 572 F.3d
14 586, 591 (9th Cir. 2009). In the first step, the ALJ must determine whether the claimant
15 has presented objective medical evidence of an underlying impairment "which could
16 reasonably be expected to produce the pain or other symptoms alleged." *Lingenfelter v.*
17 *Astrue*, 504 F.3d 1028, 1036 (9th Cir. 2007). The plaintiff does not have to show that the
18 impairment could reasonably be expected to cause the severity of the symptoms. Rather,
19 a plaintiff must only show that it could have caused some degree of the symptoms.
20 *Smolen v. Chater*, 80 F.3d 1273, 1282 (9th Cir. 1996).

21 If a plaintiff meets the first step, and there is no affirmative evidence of
22 malingering, the ALJ can only reject a plaintiff's testimony about the severity of his or
23 her symptoms by offering specific, clear, and convincing reasons. *Lingenfelter*, 504 F.3d
24 at 1036. The ALJ cannot rely on general findings. The ALJ must identify specifically
25 what testimony is not credible and what evidence undermines the plaintiff's complaints.
26 *Berry v. Astrue*, 622 F.3d 1228, 1234 (9th Cir. 2010). In weighing a plaintiff's
27 credibility, the ALJ can consider many factors including: a plaintiff's reputation for
28 truthfulness, prior inconsistent statements concerning the symptoms, unexplained or

1 inadequately explained failure to seek treatment, and the plaintiff's daily activities.
2 *Smolen*, 80 F.3d at 1284; *see also* 20 C.F.R. § 404.1529(c)(4) (Social Security must
3 consider whether there are conflicts between a claimant's statements and the rest of the
4 evidence).

5 Here, the ALJ found that Plaintiff's medically determinable impairments could
6 reasonably be expected to cause her alleged symptoms, but concluded that Plaintiff's
7 "statements concerning the intensity, persistence and limiting effects of these symptoms
8 are not entirely consistent with the medical evidence and other evidence in the record for
9 the reasons explained in this decision." (A.R. 22). As discussed below, the ALJ
10 committed harmful error in discounting Plaintiff's symptom testimony.

11 The ALJ gave several reasons for finding Plaintiff's testimony not credible. The
12 ALJ first explained that Plaintiff's "activities are inconsistent with allegations of
13 completely disabling conditions." (A.R. 22). The ALJ stated:

14 For example, the claimant reported her grandchildren—a 10-
15 month old and a two-year old—stay with her and her husband
16 while her daughter goes to work. She reported that she plays
17 with the children, holds the baby while she sits, sometimes
18 feed[s] the baby, changes the baby's clothes on occasion, and
19 plays with the children an average of two hours a day. She
20 reported that she does the laundry, which consists of putting
the clothes in the washer, taking the clothes out, and putting
them in the dryer. She reported she goes grocery shopping
with her husband.

21 (A.R. 22). "[D]isability claimants should not be penalized for attempting to lead normal
22 lives in the face of their limitations." *Reddick*, 157 F.3d at 722. The ALJ's decision does
23 not adequately explain how Plaintiff's daily activities translate to the ability to sustain
24 competitive employment on a full-time basis. *See Garrison v. Colvin*, 759 F.3d 995,
25 1016 (9th Cir. 2014) (stating that the Ninth Circuit has "repeatedly warned that ALJs
26 must be especially cautious in concluding that daily activities are inconsistent with
27 testimony about pain, because impairments that would unquestionably preclude work and
28 all the pressures of a workplace environment will often be consistent with doing more

1 than merely resting in bed all day”). The Court does not find that the ALJ’s first reason
2 for discounting Plaintiff’s symptom testimony is clear and convincing.

3 As further explanation for why the ALJ did not find Plaintiff’s symptom testimony
4 credible, the ALJ stated that

5 the medical records, as a whole, did not support the full extent
6 of allegations of disabling carpal tunnel syndrome, psoriatic
7 arthritis and cervical spine degeneration. Accordingly, these
8 statements have been found to affect the claimant’s ability to
9 work only to the extent they can reasonably be accepted as
10 consistent with the objective medical and other evidence.
Moreover, the objective medical evidence supports the above
residual functional capacity assessment.

11 (A.R. 22). The Ninth Circuit has instructed that an “ALJ must state specifically which
12 symptom testimony is not credible and what facts in the record lead to that conclusion.”
13 *Smolen*, 80 F.3d at 1284. “The clear and convincing standard is the most demanding
14 required in Social Security cases.” *Moore v. Comm’r of Soc. Sec. Admin.*, 278 F.3d 920,
15 924 (9th Cir. 2002). “Sheer disbelief” of the severity of a claimant’s symptoms “is no
16 substitute for substantial evidence.” *Benecke v. Barnhart*, 379 F.3d 587, 594 (9th Cir.
17 2004). The Court finds that the ALJ failed to provide specific, clear, and convincing
18 reasons supported by substantial evidence for discounting Plaintiff’s symptom testimony
19 regarding her impairments.

20 **E. The Case Will Be Remanded for Further Proceedings**

21 Ninth Circuit jurisprudence “requires remand for further proceedings in all but the
22 rarest cases.” *Treichler v. Comm’r of Soc. Sec. Admin.*, 775 F.3d 1090, 1101 n.5 (9th Cir.
23 2014). The Ninth Circuit, however, has adopted a test to determine when a case should
24 be remanded for payment of benefits in cases where an ALJ has improperly rejected
25 claimant testimony or medical opinion evidence. *Id.* at 1100-01; *Garrison*, 759 F.3d at
26 1020. This test is commonly referred to as the “credit-as-true” rule, which consists of the
27 following three factors:

- 28 1. Has the ALJ failed to provide legally sufficient reasons for
rejecting evidence, whether claimant testimony or medical
opinion? *Treichler*, 775 F.3d at 1100-01.

2. Has the record been fully developed, are there outstanding issues that must be resolved before a disability determination can be made, or would further administrative proceedings be useful? *Id.* at 1101. To clarify this factor, the Ninth Circuit has stated that “[w]here there is conflicting evidence, and not all essential factual issues have been resolved, a remand for an award of benefits is inappropriate.” *Id.*
3. If the improperly discredited evidence were credited as true, would the ALJ be required to find the claimant disabled on remand? *Id.*; *Garrison*, 759 F.3d at 1020.

Where a court has found that a claimant has failed to satisfy one of the factors of the credit-as-true rule, the court does not need to address the remaining factors. *Treichler*, 775 F.3d at 1107 (declining to address final step of the rule after determining that the claimant has failed to satisfy the second step). Moreover, even if all three factors are met, a court retains the discretion to remand a case for additional evidence or to award benefits. *Id.* at 1101-02. A court may remand for further proceedings “when the record as a whole creates serious doubt as to whether the claimant is, in fact, disabled within the meaning of the Social Security Act.” *Garrison*, 759 F.3d at 1021. In *Treichler*, the Ninth Circuit noted that “[w]here an ALJ makes a legal error, but the record is uncertain and ambiguous, the proper approach is to remand the case to the agency.” 775 F.3d at 1105.

Here, the vocational expert testified that Plaintiff would not be able to maintain employment if Plaintiff’s impairments would cause Plaintiff to be off task approximately ten percent of the work day or require Plaintiff to lay down outside of normal breaks and lunches. (A.R. 75). Dr. Bellew concluded that Plaintiff’s alleged pain would cause Plaintiff to be off task approximately ten percent of the work day. (A.R. 1085). Plaintiff testified that she spends three to four hours between 8:00 a.m. and 5:00 p.m. laying down or reclining. (A.R. 63). If Dr. Bellew’s opinions and Plaintiff’s testimony were credited-as-true, the ALJ would be required to find Plaintiff disabled. However, there is evidence

1 in the record that creates serious doubt that Plaintiff is in fact disabled. For example,
2 during the April 14, 2014 evaluation with psychologist Susan Patrick, Psy.D., Plaintiff
3 reported that “[s]he stopped working because her father got sick and needed a caregiver,
4 so she became a certified caregiver.” (A.R. 897). The record indicates that Plaintiff also
5 became her mother’s caregiver. A May 7, 2013 examination note states: “Caring for
6 mom, really stressed.” (A.R. 1012). During the April 2014 psychological evaluation,
7 Plaintiff recounted her daily routine as follows:

8 get up at about 7 and I will make coffee, then I will go try to
9 fix my hair and makeup and I am out the door by 8 and go
10 help my mom get up and go to the [] bathroom, and I give
11 her her shots and medication and make her something for
12 breakfast and lunch and take her to any doctor appointment
13 she has to go to. And then I come home and make my
14 husband and myself dinner. My mom had a massive stroke
15 on her right so, she needs 24 hour care. She has a caregiver
16 that comes at 4.

17 (A.R. 898). The report then states that Plaintiff “spends from 8 am to 4 pm with her
18 mother caring for her, but is not getting paid.” (*Id.*). According to the report, Plaintiff
19 told the psychologist that “After dinner, I try to relax put a little laundry in, and then I’ll
20 rest in my bed, and I will watch TV or read. I go to bed at by [sic] about 10.” (*Id.*).
21 Finally, Plaintiff reported that she has no hobbies because “I am so busy with my mom I
22 rarely get to see my sisters, my kids come over and hang out sometimes, that is
23 something I enjoy.” (*Id.*). The psychologist found Plaintiff to be a reliable historian and
24 found no evidence of inconsistencies. (*Id.*). Plaintiff’s daily routine as reported to the
25 evaluating psychologist drastically conflicts with Plaintiff’s hearing testimony that her
26 alleged impairments have prevented her from performing any kind of fulltime work since
27 2013. (A.R. 67). The record contains other conflicting evidence. For instance,

28 1. At the hearing, Plaintiff first testified that she is not able to drive, explaining
that she is “not supposed to be driving [while on her medications].” (A.R. 47). Later
during the hearing, Plaintiff stated: “I don’t take medication. They don’t work. So, I
don’t bother to take it.” (A.R. 55).

2. A May 7, 2013 medical examination found “[n]ormal range of motion, muscle strength, and stability in all extremities with no pain on inspection.” (A.R. 1015).

3. During the April 18, 2014 examination with consulting physician Efren Cano, D.O., Plaintiff denied significant impact on activities of daily living. (A.R. 904).


The above factual conflicts and questions are significant and should be resolved through further administrative proceedings. *See Treichler*, 775 F.3d at 1105 (finding that crucial questions as to the extent of a claimant’s impairment given inconsistencies between the claimant’s testimony and the medical evidence in the record are “exactly the sort of issues that should be remanded to the agency for further proceedings”); *see also Greger v. Barnhart* 464 F.3d 968, 972 (9th Cir. 2006) (stating that so long as the ALJ “specifically identif[ies] what testimony is credible and what testimony undermines the claimant’s complaints . . . questions of credibility and resolutions of conflicts in the testimony are functions solely of the [ALJ]”) (citation omitted).

III. CONCLUSION

Based on the foregoing, the Court finds that the decision of the Commissioner of Social Security is not supported by substantial evidence in the record as a whole and is not based on proper legal standards. Accordingly,

IT IS ORDERED reversing the decision of the Commissioner of Social Security and remanding the case to the Commissioner for further administrative proceedings pursuant to sentence four of 42 U.S.C. § 405(g). The ALJ shall issue a new decision that is consistent with the applicable law as set forth in this Order. The ALJ, however, is not precluded from reopening the hearing to receive additional evidence if deemed appropriate. The Clerk of Court is directed to enter judgment accordingly.

Dated this 7th day of June, 2019.


Eileen S. Willett
United States Magistrate Judge